APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/475,765	12/30/1999	ERIC HAMER	KEYNP005	6830

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EXAMINER
NGUYEN, PHUOC H

ART UNIT	PAPER NUMBER
2143	14

DATE MAILED: 11/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/475,765	HAMER ET AL.
	Examiner	Art Unit	
	Phuoc H. Nguyen	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE __3__ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 September 2003*.

2a)☒ This action is **FINAL.**   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-21 and 23-30* is/are pending in the application.

　4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-21 and 23-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　a)☐ All b)☐ Some * c)☐ None of:

　　1.☐ Certified copies of the priority documents have been received.

　　2.☐ Certified copies of the priority documents have been received in Application No. _____.

　　3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

　* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

　a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .

4)☐ Interview Summary (PTO-413) Paper No(s). _____ .
5)☐ Notice of Informal Patent Application (PTO-152)
6)☐ Other: .

DETAILED ACTION

Response to Amendment

1.   This office action is in response to the amendment filed on September 03, 2003 (Paper

No. 14). Original application contained claims 1-30. Applicant amended claims 1,20,23, and

24, and cancelled 2, and 22. Amendment filed on September 03, 2003 have been entered and

made of record. Therefore, pending claims 1,3-21, and 23-30 are presented for further

consideration and examination.

Response to Arguments

2.   Applicants' arguments with respect to currently amended claims 1,3-21, and 23-30 have

been considered but are moot in view of the ground(s) rejection.

Claim Rejections - 35 USC § 112

3.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the
> subject matter which the applicant regards as his invention.

4.   Claim 1 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to

particularly point out and distinctly claim the subject matter which applicant regards as the

invention.

Regarding claim 1, the limitation *loading data responsive to the request for information*

onto the data acquisition agent is unclear whether the loading data is done on the web server or

client by the acquisition agent. For examination purpose examiner consider limitation above as

the loading data is done on the web server. Also, the limitation *executing the transaction by*

simulating a transaction previously recorded between a user machine and the information

source, collecting performance measurements for the transaction, and sending the

performance measurements to a storage device is unclear whether the executing the transaction,

collecting performance, and send sending the performance measurements is done on the web

server or client by the acquisition agent. For examination purpose examiner consider limitation

above as the loading data is done on the client by the acquisition agent.

Claim Rejections - 35 USC § 103

5.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

6.   Claims 1,3-21, and 23-30 rejected under 35 U.S.C. 103(a) as being unpatentable over

Killian U.S. Patent 6,438,592 in view of Caccavale U.S. Patent 5,459,837.

7.   Referring to claims 1, and 20, Killian reference discloses connecting a data acquisition

agent to the network (Fig. 1; and col. 8, lines 7-18); sending a request for information from the

data acquisition agent to the information source (col. 8, lines 7-18); loading data responsive to

the request for information onto the data acquisition agent (col. 8, lines 7-18); executing the

transaction (Abstract; col. 3, lines 47-63); collecting performance measurements for the

transaction (Abstract; col. 3, lines 47-63; and col. 17, lines 49-67); and sending the performance

measurements to a storage device (col. 9, lines 61 through col. 10, lines 11); however, Killian

fail to disclose simulating a transaction previously recorded between a user machine and the

information source.

Caccavale reference discloses simulating a transaction previously recorded between a

user machine and the information source (Figure 7; and col. 9, lines 23-30; col. 9, lines 64

through col. 10, lines 22).

It would have been obvious to one of the ordinary skill in the art at the time of the

invention was made to incorporate Caccavale's teaching into Killian's method to perform

transaction simulation tracking, so the user can determine how efficiently server in the response

to the transaction.

8.   Referring to claim 3, Killian reference discloses collecting performance measurement

comprises collecting download time of the data in response to the request for information (col. 8,

lines 39-56; and col. 9, lines 12-35).

9.   Referring to claims 5, and 26, Killian reference discloses collecting performance

measurements comprises identifying errors occurring during the transaction (Abstract; Figure 19;

and col. 22, lines 33-51).

10.   Referring to claim 6, Killian reference discloses the network is the Internet (Figure 1,

Internet (110)).

11.   Referring to claim 7, Killian reference discloses the information source is a web server

and the request for information comprises requesting a web page (col. 3, lines 16-32).

12.   Referring to claims 8, and 27, Killian reference discloses collecting performance

measurements comprises collecting download time for each web page downloaded during the

transaction (col. 3, lines 47-63).

13.   Referring to claims 9, and 28, Killian reference discloses collecting performance measurements comprises collecting download time for individual components within each of the web pages (Abstract; col. 3, lines 47-63; and col. 9, lines 12-35).

14.   Referring to claim 10, Killian reference discloses connecting a data acquisition agent to the network comprises connecting a plurality of data acquisition agents to the network at a plurality of locations (Abstract; col. 3, last paragraph through col. 4, 1st paragraph).

15.   Referring to claim 11, Killian reference discloses comprising displaying the performance measurements on a web site (col. 10, lines 18-20).

16.   Referring to claim 12, Killian reference discloses executing the transaction comprises sending a query from the data acquisition agent to the information source after the data is loaded (col. 8, lines 39-56; col. 8, last paragraph through col. 9, 1st paragraph; and col. 11, lines 32-54).

17.   Referring to claim 13, Killian reference discloses executing the transaction comprises submitting an order from the data acquisition agent to the information source after the data is loaded (col. 8, lines 39-56; col. 8, last paragraph through col. 9, 1st paragraph; and col. 11, lines 32-54).

18.   Referring to claim 14, Killian reference discloses executing the transaction comprises updating state information to link web pages together within a transaction (Figure 20; and col. 4, lines 59-62).

19.   Referring to claim 15, Killian reference discloses updating state information comprises searching for a session ID (col. 8, last paragraph through col. 9, 1st paragraph; and col. 21, lines 27-54).

20.   Referring to claim 16, Killian reference discloses updating state information comprises searching for a text (Figure 8; col. 10, lines 50-65; and col. 13, 2nd paragraph).

21.   Referring to claim 17, Killian reference discloses updating state information comprises searching for a frame (Figures 10, and 11; col. 16, lines 10-25).

22.   Referring to claim 18, Killian reference discloses updating state information comprises searching for a URL (Figure 11; col. 10; lines 50-65; and col. 13, 2nd paragraph).

23.   Referring to claim 19, Killian reference discloses updating state information comprises searching for a HTML text (Figure 8; col. 3, lines 47-63; col. 11, 2nd paragraph; and col. 13, 2nd paragraph).

24.   Referring to claim 21, Killian reference discloses the data acquisition agent includes a browser embedded within the agent (col. 3, lines 34-46; col. 8, lines 28-38; col. 13, lines 66 through col. 14, lines 10; and col. 15, 2nd paragraph).

25.   Referring to claim 23, Killian reference discloses the data acquisition agent is configured to receive said recorded transaction over the network (Figure 1).

26.   Referring to claim 24, Killian reference discloses the data acquisition agent is configured to receive instructions specifying a plurality of said recorded transactions to execute (col. 3, lines 34-63; col. 8, lines 39-56; and col. 9, lines 12-35).

27.   Referring to claim 25, Killian reference discloses the data acquisition agent is configured to repeat execution of said specified transactions until new instructions are received (col. 12, lines 35-53).

28.   Referring claim 29, Killian reference discloses a monitoring device for recording when the agent last executed the transaction (col. 39, lines 54-64; and col. 40, lines 47-51).

29.   Referring to claim 30, Killian reference discloses the agent is operable to store the

collected performance measurements (col. 8, lines 39-56).

Conclusion

30.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing

date of this final action.

31.   The prior art made of record and not relied upon is considered pertinent to applicant's

disclosure.

        Hoyer et al. U.S. Patent 6,381,635

        Barrick, Jr. et al. U.S. Patent 6,006,260

        Yee et al. U.S. Patent 5,872,976

        Forman et al. U.S. Patent 6,178,449

        Chandra et al. U.S. Patent 6,397,359

Chen et al. U.S. Patent 6,327,700

Merriam U.S. Patent 6,587,878

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuoc H. Nguyen whose telephone number is 703-305-5315. The examiner can normally be reached on Mon -Thu (7AM-4:30PM) and off every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Wiley can be reached on 703-308-5221. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

> Phuoc H. Nguyen
> Examiner
> Art Unit 2143

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November 10, 2003

DAVID WILEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100